

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of:)	
)	
Opinion requested by)	No. 75-163
Assemblyman Art Torres)	Feb. 4, 1976
)	

BY THE COMMISSION: We have been asked the following questions by Assemblyman Art Torres:

Assemblyman Art Torres was married after the effective date of the Political Reform Act. He and his wife neither invited nor accepted gifts from lobbyists, so the following questions pertain only to the reporting requirements imposed by Chapter 7 of the Political Reform Act:

(1) Are wedding gifts addressed to and received by Assemblyman Torres' wife prior to the marriage her separate property and, therefore, not reportable by Assemblyman Torres?

(2) If wedding gifts are community property, is the entire value reportable or only one-half of the value? If, for example, an Osterizer cost \$49.38, is the full value reportable by Assemblyman Torres or is only one-half the value of the gift attributable to him and, therefore, not reportable because the value attributed to him would not exceed the \$25.00 threshold for reporting gifts?

(3) Many Assemblymen contributed to buy Assemblyman Torres and his wife a set of china dishes. Each individual share was less than \$25.00, but the total cost of the dishes was greater than \$25.00. How should that gift be reported?

CONCLUSION

(1) For purposes of income reporting under Government Code Sections 87200, et seq., wedding gifts should be considered the property of both spouses unless they are peculiarly adaptable to the personal use of one spouse or specifically and unequivocally intended exclusively for use by one spouse. Consequently, wedding gifts may be reportable by Assemblyman Torres even though they were received by his wife prior to the wedding.

(2) Each spouse has a present, existing and equal interest in wedding gifts which are the property of both spouses. Assemblyman Torres must disclose only those gifts in which his interest exceeds the \$25.00 threshold for reporting gifts. This means that wedding gifts, the total value of which is \$50.00 or more, will be reportable by the Assemblyman.

(3) When a single gift worth \$25.00 or more is given by many donors each of whom contributed less than \$25.00, the recipient should report receipt of the gift but need not disclose the name of every donor. It is sufficient to describe in general terms those who gave the gift. If, however, any contributor gave \$25.00 or more, his or her name must be disclosed. In this case, because the gift was given to both Assemblyman Torres and his wife, the Assemblyman need only report the name of each donor who contributed \$50.00 or more.

ANALYSIS

(1) As an elected state officer, Assemblyman Torres must file periodic statements disclosing his investments, his interests in real property and his income. Government Code Section 87203.^{1/} When reporting his income, he is required to disclose the receipt of gifts from the same source aggregating twenty-five dollars (\$25.00) or more in value and to specify the name and address of the source, the value of the gift and the date on which it was received. Section 87207. Because he was married after the effective date of the Political Reform Act, Sections 81000, et seq., Assemblyman Torres has asked a number of questions with respect to his reporting obligations concerning wedding gifts. His first question asks whether wedding gifts received by his bride prior to the marriage are reportable by him.^{2/}

^{1/}
All statutory references are to the Government Code unless otherwise noted.

^{2/}
The reporting requirements imposed by the Political Reform Act do not apply to gifts from the filer's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, aunt, uncle, first cousin or the spouse of any such person. Section 82030. The analysis contained in this opinion applies only to wedding gifts which are received from persons other than close relatives.

The law of community property does not provide clear guidance with respect to the ownership of wedding gifts. As a general rule, the character of property as separate or community is fixed as of the time it is acquired. Clacorn v. Rowe, 109 Cal.App.2d 493 (1952). Applicable California law provides:

All property of the wife, owned by her before marriage, and that acquired afterwards by gift, bequest, devise, or descent, ... is her separate property.

Civil Code Section 5107.

Civil Code Section 5108 contains an analogous provision with regard to separate property of the husband.^{3/}

A literal interpretation of these constitutional and statutory provisions supports a conclusion that wedding gifts received by the bride before the wedding are her separate property. However, it could be argued that wedding gifts are given in anticipation of the ensuing marriage relationship and are intended for the benefit and use of both spouses, even if received and acknowledged by the bride. Therefore, they are not, in one sense, "property of the wife, owned by her before marriage... Even if we conclude that the wedding gifts are separate property at the time of marriage, persuasive arguments could be made to support the conclusion that the property is converted from separate property to community property when the marriage takes place or some time shortly thereafter. Mears v. Mears, 180 Cal.App.2d 484 (1960).

The cases in our own and other jurisdictions afford little guidance for determining this perplexing problem.^{4/} When

^{3/}

See also Cal. Const. Art. 1, Sec. 21 which provides:
Property owned before marriage or acquired during marriage by gift, will, or inheritance is separate property.

^{4/}

See Annot.: Rights in wedding presents as between spouses. 75 A.L.R.2d 1365 (1961).

There is some authority in our jurisdiction for determining ownership on the basis of equitable rather than legal interests when acquisition of the property spanned the time that marriage occurred. For example, wages of one spouse earned before but collected after marriage are separate property. Thomasset v. Thomasset, 122 Cal.App.2d 116 (1953). On the other hand, real property purchased before marriage becomes community property to the extent that mortgage payments and other maintenance expenses are paid from community funds after the marriage. Bare v. Bare, 256 Cal.App.2d 684 (1967).

called upon to determine the ownership of wedding gifts, a New York court has observed as follows:

The authorities which I am called upon to examine are few and elusive to put it mildly. Indeed I find that only Emily Post presumes to speak with confidence in this regard. Etiquette, Emily Post, New and Enlarged Edition, Funk and Wagnalls Company, page 322.

"Wedding presents are all sent to the bride, and are, according to law, her personal property." (Italics ours.)

It may be that in "polite" society all wedding presents are sent to the bride....

The fact is however that not all wedding guests have been trained in the niceties of "polite" society and unfortunately many of them have never read Miss Post's book....

While no one will challenge Miss Post's eminence as an arbiter of good taste, I doubt that her pronouncement on the law in this regard may be accorded the dignity of stare decisis. It would have been nice had she cited a competent judicial decision of such sweeping magnitude. Had she done so there would be no need for this opinion.

Avnet v. Avnet, 124 N.Y.S.2d 517, 521.
(Mun. Ct. 1953)

After making these observations, the court went on to hold that:

... this is the age of "50-50" marriages. The time has come to say clearly that all wedding gifts whether from the bride's "side" or from the groom's, excepting such items which are peculiarly adaptable to the personal use of either spouse, and those gifts which are specifically and unequivocally "earmarked" as intended exclusively for one or the other of the spouses,... are the joint property of both parties to the marriage. This reasoning should apply as well to things of like use purchased with cash wedding gifts not otherwise "earmarked."

Avnet v. Avnet, 124 N.Y.S.2d at 524.

Rather than depend on the theoretical nuances of community property law to determine ownership of wedding gifts, we believe that the interests of disclosure under the Political Reform Act can best be served by adopting a test similar to that set forth in Avnet. Regardless of whether or not the gift is received by the bride prior to the marriage, wedding gifts benefit both spouses and should be subject to disclosure unless peculiarly adaptable to the personal use of one spouse or specifically intended for the use of one spouse. Accordingly, Assemblyman Torres should disclose receipt of wedding gifts according to the guidelines which we set forth in this opinion.

(2) Assemblyman Torres has asked how he should report the value of wedding gifts given to him and his wife. Assemblyman Torres must disclose "his income" including specific information about gifts received by him that aggregate \$25.00 or more in value. Sections 87203, 87207. When the gift is the property of both spouses, we interpret the disclosure requirement for gifts aggregating \$25.00 or more in value to apply to the officeholder's interest in the gift, not to the total value of the gift.

For those wedding gifts which are the property of both Assemblyman Torres and his wife, the Assemblyman's interest is one-half the value of the gift. Accordingly, the Assemblyman does not have to disclose the gift unless the total value equals or exceeds \$50.00, in which case his one-half interest would equal or exceed \$25.00. In the example posited by Assemblyman Torres, if an Osterizer cost \$49.38, the Assemblyman's interest in this community property is \$24.69. Since his interest is less than \$25.00, the Osterizer is not a reportable gift.

Although the concept of community property is not usually applied to determine the extent of one's interest in individual household items, our conclusion finds support in community property law.

Civil Code Section 5105 provides:

The respective interests of the husband and wife in community property during continuance of the marriage relation are present, existing and equal interests....

Assemblyman Torres, therefore, has a one-half interest in the community property owned by him and his wife. See People v. Lockett, 25 Cal.App.3d 433 (1972). Consequently, we conclude

that the disclosure of gifts required by Section 87207 is disclosure of one-half the value of a gift which is received by both spouses.^{5/}

(3) Assemblyman Torres has asked how to report receipt of a set of china which is worth more than \$25.00, but which was given by a number of donors, each of whom contributed less than \$25.00.

The disclosure requirements of the Political Reform Act, Sections 87200, et seq., are triggered by the value of the gift received rather than by whom the gift is made. A set of china is a single gift for purposes of the Act and must be disclosed because the gift benefits both spouses and has a value of \$50.00 or more.^{6/}

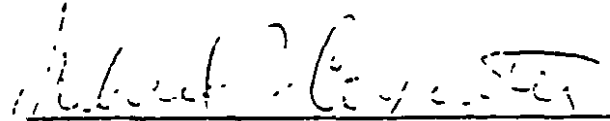
Assemblyman Torres has indicated that many Assemblymen contributed to the purchase of the china. In general, the recipient of a reportable gift must disclose the name of each donor. However, where, as in this case, the gift was made by a large number of people none of whom contributed \$50.00 or more, we do not believe that Assemblyman Torres need disclose the name of each donor. His report is sufficient if he merely indicates that the gift was made by "Twenty members of the Assembly" or a similar designation that describes the group of persons making the gift. On the other hand, if he knows or has reason to know that any donor's share of the gift was \$50.00 or more, Assemblyman Torres should disclose the name of that donor.^{7/}

^{5/} Assemblyman Torres may not know the exact value of each gift. A reasonable estimate based on a good faith effort to ascertain the value of the gift is sufficient to comply with the disclosure requirements of Section 87207. See Opinion requested by Kenneth Cory, 1 FPPC Opinions 153 (No. 75-094-B, Oct. 23, 1975).

^{6/} Assemblyman Torres indicated that the value of the gift exceeded \$25.00. As indicated by our analysis in Part 2 of this opinion, the gift was received by Assemblyman Torres and his wife and, therefore, must be disclosed only if it has a value of \$50.00 or more. We assume that the value of the set of china exceeds \$50.00.

^{7/} Section 81004 requires a filer to use reasonable diligence in the preparation of reports. Assemblyman Torres will be deemed to have used reasonable diligence if he reports information of which he has knowledge or that is readily discoverable. He need not conduct an independent investigation to determine the amount donated by each contributor.

Approved by the Commission on February 4, 1976.
Concurring: Brosnahan, Carpenter, Lowenstein, Viller and
Waters. Commissioner Lowenstein dissented from Part (2).


Richard J. Carpenter
Commissioner

LOWENSTEIN, CHAIRMAN, DISSENTING IN PART: I join in Parts 1 and 3 of the opinion of the Commission, but I believe the Act requires reporting of the full value of any wedding gift of \$25 or more.

We are not concerned here with the rights of a husband and wife in their property upon separation. For purposes of the Political Reform Act, a wedding present of \$25 is a single gift of \$25 to both, not separate gifts of \$12.50 each.

The practical effect of the Commission's opinion will be to make gifts between \$25 and \$50 sometimes reportable and sometimes not reportable. This may not be of great significance, for the \$25 figure contained in the statute is, like any such threshold figure, inherently arbitrary. The figure could probably be \$10 or \$50 instead of \$25, so long as there is a clear dividing line between what is reportable and what is not reportable. The conclusion of the Commission may create confusion since there will now be two dividing lines rather than one, and in some cases there may be considerable doubt as to which threshold is applicable. Any official who henceforth receives a gift valued between \$25 and \$50 must decide whether the gift was to the official only or to the official and his or her spouse. Such a determination can no doubt be made, but the question would never arise if the Commission took the simpler approach of concluding that all gifts of \$25 or more are reportable. For these reasons, I respectfully dissent from Part 2 of the Commission's opinion.


Daniel H. Lowenstein
Chairman